

George Haines, Esq.
Nevada Bar No. 9411
Benjamin Chambliss, Esq.
Nevada Bar No. 11536
FREEDOM LAW FIRM
8985 S. Eastern Ave., Suite 350
Las Vegas, NV 89123
Phone: (702) 880-5554
FAX: (702) 385-5518
Email: ghaines@freedomlegalteam.com
Attorney for Steven E. Durham

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

**Case No. 19-17961-abl
Chapter 13**

STEVEN E. DURHAM,

Hearing Date: 10/5/2021
Hearing Time: 9:30 a.m.

Debtor.

Continued Hearing Date: 11/10/2021
Continued Hearing Time: 9:30 a.m.

**AMENDED SUPPLEMENTAL DECLARATION OF GEORGE HAINES, ESQ.
REGARDING INTERIM ORDER ON DEBTOR'S MOTION FOR SANCTIONS FOR
FUNBOX'S FAILURE TO COMPLY WITH ORDER ON DEBTOR'S MOTION TO
ENFORCE SETTLEMENT AGREEMENT**

George Haines, Esq. hereby declares the following under penalty of perjury:

1. I am an attorney duly licensed to practice law in the State of Nevada and I am an attorney in the law firm of FREEDOM LAW FIRM, LLC, with offices located at 8985 S. Eastern Avenue, Suite 350, Las Vegas, Nevada 89123.

2. I am counsel for Debtor in the above Chapter 13 proceeding. I have personal knowledge of the matters set forth herein and, if called as a witness, could and would competently testify thereto.

1 3. On October 5, 2021, the Court entered an Interim Order on Debtor's Motion for
2 Sanctions for Fundbox's Failure to Comply with Order on Debtor's Motion to Enforce
3 Settlement Agreement ("Interim Order"). (ECF No. 132).

4 4. Pursuant to the Interim Order, Debtor was allotted the opportunity to supplement the
5 record with Declarations regarding that damages, attorney's fees and costs sought in connection
6 with this matter. (See Id.).

7 5. I hereby submit this Supplement Declaration in support of Debtor's damages,
8 attorney's fees and costs.

9
10 **A. CONSEQUENTIAL DAMAGES**

11 6. Damages from a breach of contract should be such as may fairly and reasonably be
12 considered as arising naturally, or were reasonably contemplated by both parties at the time they
13 made the contract. *See* Conner v. S. Nev. Paving, 103 Nev. 353, 356 (1987).

14 7. As set forth in the Declaration of Steve Durham (ECF No. 139), Fundbox's failure to
15 comply with the Settlement Agreement and Mutual Release ("Settlement Agreement") has caused
16 Mr. Durham to incur additional damages. (See Id.).

17 8. Specifically, Fundbox's failure to withdraw or remove the UCC Filing Statement filed
18 against LGS Insurance, Inc. caused Mr. Durham to be denied a Paycheck Protection Program
19 ("PPP") loan in the amount of \$20,000. Mr. Durham further stated that the PPP loan would have
20 been used for payroll and thus, it would have been 100 percent forgiven. Mr. Durham is requesting
21 \$20,000 in damages as result of this loan denial.

22 9. Mr. Durham was also denied the SBA's Economic Injury Disaster Advance of \$10,000
23 as a result of Fundbox's failure to remove the UCC Filing Statement. Mr. Durham would not have
24

1 been required to pay back this advance. Thus, Mr. Durham is requesting \$10,000 damages as
2 result of this loss of benefit.

3 **B. BANKRUPTCY COURT'S INHERENT SANCTION AUTHORITY**

4 10. Bankruptcy courts possess inherent sanction authority. See *Knupfer v. Lindblade (In*
5 *re Dyer)*, 322 F.3d 1178 (9th Cir. 2003). Civil penalties must either be compensatory or
6 designed to coerce compliance. See *F.J. Hanshaw Enters., Inc. v. Emerald River Dev., Inc.*, 244
7 F.3d 1128, 1137-38 (9th Cir. 2001).

8 11. Fundbox's contempt has been blatant and is ongoing.

9 12. On June 7, 2021, Mr. Durham served Fundbox with the following documents: 1.)
10 Motion to Enforce Settlement Agreement (ECF No. 102); 2.) Declaration of George Haines, Esq.
11 (ECF No. 104); 3) Exhibit 1 – Settlement Agreement (ECF No. 102); and 4.) Notice of Motion to
12 Enforce Settlement Agreement (ECF No. 103). Fundbox failed to file responsive pleadings.

13 13. On July 14, 2021, Mr. Durham served Fundbox with the following documents: 1.)
14 Notice of Entry of Order on Debtor's Motion to Enforce Settlement Agreement; and 2.) Order on
15 Debtor's Motion to Enforce Settlement Agreement. (ECF No. 110).

16 14. On August 31, 2021, Mr. Durham served Fundbox with the following documents: 1.)
17 Motion for Sanctions for Fundbox's Failure to Comply with Order on Debtor's Motion to
18 Enforce Settlement Agreement (ECF No. 108); 2.) Declaration of George Haines, Esq.; and 3.)
19 Notice of Motion for Sanctions for Fundbox's Failure to Comply with Order on Debtor's Motion
20 to Enforce Settlement Agreement failed to file responsive pleadings (ECF No. 108). Again,
21 Fundbox failed to file responsive pleadings.

22 15. Mr. Durham also served these documents on additional addresses that he located for
23 Tenaglia & Hunt on September 17, 2021. (ECF No. 121). Fundbox failed to respond.
24

16. On October 11, 2021, Mr. Durham served Fundbox with the following documents:

1.) Notice of Entry of Interim Order on Debtor's Motion for Sanctions for Fundbox's Failure to Comply with Order on Debtor's Motion to Enforce Settlement Agreement (ECF No. 108); and

2.) Interim Order on Debtor's Motion for Sanctions for Fundbox's Failure to Comply with Order on Debtor's Motion to Enforce Settlement Agreement (ECF No. 108).

17. To-date, Fundbox has made no attempt to comply with any of the aforementioned Orders filed with the Court.

18. Mr. Durham proposes that additional sanctions are required to coerce Fundbox into complying with the Court Orders. Mr. Durham proposes that Fundbox be subject to the following:

- a \$500.00 a day sanction beginning 7-days after the notice and entry of any order that the Court may file as a result of this Supplemental Declaration;
- That within 14-days after the entry of that Order, if Fundbox pays all money due and provides proof the U.C.C. Filing Statement has been withdrawn, Fundbox can avoid this additional sanction;
- If after the 14-days Fundbox has still not complied, a \$1,000.00 a day sanction shall apply with those additional sanctions becoming permanent every 14-days thereafter;
- These sanctions will continue accrue until Funbox complies with the Court Orders entered in this case; and
- Every 30-days after the entry of this proposed order, Mr. Durham's counsel will again serve and notice this Order on Fundbox.

C. ADDITIONAL ATTORNEYS' FEES AND COSTS

19. With regard to the attorneys' fees and costs incurred as a result of Fundbox's failure to comply with the Order on Debtor's Motion to Enforce Settlement Agreement (ECF No. 108), Freedom Law Firm has spent the following billable time and incurred the following expenses relating to this matter:

<u>DATE</u>	<u>FLF EMPLOYEE</u>	<u>DESCRIPTION</u>	<u>TIME SPENT</u>
08/19/2021	GHH	Discuss status of case with co-counsel	.5
8/24/2021	GHH	Review case and prepare motion for contempt	1
8/25/2021	GHH	Review case. Review voicemail message from client re contempt proceedings. Prepare email response.	.2
8/27/2021	GHH	Review email from client. Prepare Declaration in support of motion for sanctions.	.9
8/29/2021	GHH	Review and finalize motion.	.2
09/06/2021	GHH	Review email from client. Prepare email to co-counsel.	.2
09/09/2021	GHH	Research UCC Lien in California.	.4
09/09/2021	GHH	Discuss UCC lien with BC.	.2
09/08/2021	BC	Discuss UCC lien with GH	.2
09/08/2021	BC	Prepare and upload interim order	.1
09/09/2021	GHH	Review result of hearing	.1
09/16/2021	GHH	Prepare motion for service to John Tenaglia	.2
9/21/2021	GHH	Review message from client re status of motion to enforce.	.1
9/25/2021	GHH	Discuss upcoming sanction's motion with client.	.3
10/05/2021	BC	Prepare for motion for sanctions	.1
10/5/2021	BC	Attend motion for sanctions hearing	.4
10/05/2021	BC	Prepare Interim Order	.1
10/5/2021	GHH	Discuss sanction's hearing with BC and co-counsel. Prepare email to client re hearing.	.7
10/10/2021	GHH	Research potential damages for contempt. Prepare email to client re potential damages.	1.6
10/11/2021	RLM	Prepare and file notice of entry of Order	.5
10/14/2021	GHH	Discuss consequential damages with client.	.3
10/26/2021	GHH	Prepare email to client re damages.	.1
10/27/2021	GHH	Prepare email to client re damages.	.1
10/30/2021	GHH	Begin preparing declarations in	1.7

		support of damages	
10/30/2021	GHH	Research regarding damages for contempt.	1.3
11/3/2021	GHH	Finalized Declarations in support of damages.	1.2
		Total:	12.7

20. Based upon the above, Freedom Law Firm, LLC spent approximately 12.7 hours on this matter distributed by employee type as seen below:

8. Paralegal (SH): .5

9. Associate Attorney (ON & BC): .9

10. Partner (GHH): 11.3

21. Our standard hourly rates are as follow:

11. Paralegal (\$165.00/hr): \$82.50

12. Associate Attorney (\$495/hr): \$445.50

13. Partner (\$595/hr): \$6,723.50

22. Accordingly, the fees incurred by Freedom Law Firm to date related to this matter is: **\$7,251.50.**

23. Freedom Law Firm, LLC has also incurred mailing and copying charges in the amount of **\$60.00. Total attorneys' fees and costs in \$7,311.50.00.**

1 24. I declare under penalty of perjury that the foregoing is true and correct. I
2 declare under penalty of perjury that the foregoing is true and correct.

3 DATED: November 8, 2021

4 /s/ George Haines
George Haines, Esq.
Nevada Bar No. 9411
FREEDOM LAW FIRM, LLC
8985 S. Eastern Ave. Ste. 350
Las Vegas, Nevada 89123
Counsel for Steven Durham

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Las Vegas, Nevada 89123
OFFICE: (702) 880-5554 FAX: (702) 385-5518